

REMARKS/ARGUMENTS

Claims 22 through 24, 26, and 27 are pending in this application. The feature of claim 25 has been incorporated into independent claim 22. Subsequently, claim 25 is cancelled by the Amendment. For at least the reasons set forth below, Applicants believe the claimed invention is patentable over the cited references. However, if for any reason the Examiner believes the application is not in condition for allowance, Applicant's attorney hereby requests a telephonic interview to further advance the prosecution of the application.

Claims 22 through 24 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. D250,663 to Koch et al. (hereinafter "Koch").

Claim 22 provides a barrel for use with a tampon applicator assembly including an insertion tip having a plurality of petals, a main section with a taper ratio of about 1.07 to about 1.15, and a finger grip having a first region, a gripping region, and a second region. The first region intersects with the main section at a first plane having a first outer dimension, the gripping region intersects with the first region and has a second outer dimension, and the second region intersects with the gripping region and has a third outer dimension. The first outer dimension is larger than the second outer dimension and the third outer dimension is larger than the second outer dimension.

Koch is a design patent that simply provides an ornamental design of a tampon applicator with a barrel, a finger grip, and a plunger.

Applicants respectfully submit that Koch fails to disclose or suggest a barrel for use with a tampon applicator assembly with a main section having a taper ratio of about 1.07 to about 1.15, as recited in claim 22. Consistent with Applicants' contention, the Action concedes that Koch does not disclose a taper ratio. In contrast, the ornamental design of the tampon applicator of Koch has a conventional tampon applicator barrel that is uniformly cylindrical. Thus, Koch fails to disclose or suggest all of the features

recited in claim 22.

It is respectfully submitted that claim 22 and claims 23 and 24 depending therefrom, are patentably distinguishable over Koch. Accordingly, reconsideration and withdrawal of the §102(b) rejection are requested.

Claims 25 through 27 stand rejected under 35 U.S.C. §103(a) as being obvious over Koch. Claim 25 is cancelled.

The features of claim 25 have been incorporated in claim 22 described above.

Applicants respectfully submit that Koch fails to disclose or suggest a barrel for use with a tampon applicator assembly with a main section having a taper ratio of about 1.07 to about 1.15, as recited in claim 22. Consistent with Applicants' contention, the Action concedes that Koch does not disclose a taper ratio. However, the Office Action contends that Koch discloses a tampon inserter having a curved insertion tip similar in structure to the curved insertion tip of the present invention, and, therefore, it is reasonable for the Examiner to conclude the curved insertion tip of Koch would not constitute a severe curvature. Applicants respectfully disagree.

Applicants respectfully submit that the proportions of features in a drawing are not evidence of actual proportions when drawings are not to scale. MPEP 2125. In addition, the application must disclose that the drawings are to scale in order for figures to be considered to scale. See *In re Wright*, 569 F.2d 1124, 193 USPQ 332(CCPA 1977). Koch does not disclose that the Figure is to scale. Furthermore, "it is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue." See *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000). Thus, the patent drawings of Koch may not be relied on to show particular sizes if the specification is completely silent on the issue. Koch, which again is a design patent, is completely silent on taper ratio. In addition, the

ornamental design of Koch has a conventional tampon applicator barrel that is uniformly cylindrical. In contrast, claim 22 recites that the main section has a taper ratio of about 1.07 to about 1.15. Furthermore, as provided on paragraph [0038], lines 1 through 4 of the specification, the "tapering of the main section facilitates insertion comfort by gradually parting the vulva-vaginal channel over a longer length of barrel 14 than that of only insertion tip 20." Thus, Koch fails to disclose or suggest all of the features recited in claim 22.

Claim 26 depends from claim 22, and further includes that the insertion tip have a taper ratio of more than about 0.66, respectively.

Koch does not disclose or suggest that the insertion tip has a taper ratio of more than about 0.66, as recited in claim 26. As discussed above, the Action concedes Koch does not disclose a taper ratio. The Office Action provides that Koch discloses a tampon inserter having a curved insertion tip similar in structure to the curved insertion tip of the present invention, and, therefore, it is reasonable for the Examiner to conclude the curved insertion tip of Koch would not constitute a severe curvature. Applicants respectfully disagree. As discussed above, proportions of features in a drawing are not evidence of actual proportions when drawings are not to scale. MPEP 2125. In addition, the application must disclose that the drawings are to scale in order for figures to be considered to scale. See *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977). Koch does not disclose that the Figure for this design patent is to scale. Furthermore, "it is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue." See *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000). Thus, the patent drawings of Koch may not be relied on to show particular sizes if the specification is completely silent on the issue. Koch is completely silent on taper ratio.

Therefore, Koch does not disclose or suggest that the insertion tip have a taper ratio of more than about 0.66, as recited in claim 26.

Claim 27 depends from claim 22, and further includes that the plurality of petals have a petal length-to-width ratio of about 2 to about 3.

Koch does not disclose or suggest that the plurality of petals have a petal length-to-width ratio of about 2 to about 3, as recited by claim 27. The Action concedes Koch does not disclose the petal length-to-width ratio. Again, the proportions of features in a drawing are not evidence of actual proportions when drawings are not to scale, and the application must disclose that the drawings are to scale in order for figures to be considered to scale. Koch does not disclose that the Figure is to scale. Further, patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue. Thus, the single Figure in Koch may not be relied on to show particular sizes since the specification is completely silent on the issue. The Koch design specification is completely silent on the petal length-to-width ratio.

Therefore, Koch does not disclose or suggest that the plurality of petals have a petal length-to-width ratio of about 2 to about 3, as recited in claim 27.

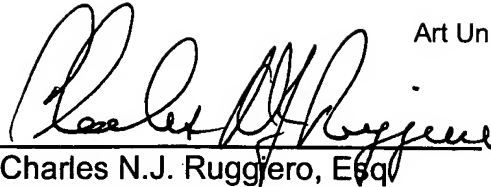
It is respectfully submitted that claim 22 and claims 26 and 27 that depend from claim 22, are patentable over Koch. Accordingly, reconsideration and withdrawal of the §103(a) rejection are requested.

In view of the foregoing, applicants respectfully submit that all claims present in this application patentably distinguish over the cited prior art reference. Accordingly, applicants respectfully request favorable reconsideration and withdrawal of the rejections of the claims. Also, applicants respectfully request that this application be passed to allowance.

Serial No.: 10/619,677

Art Unit: 3761

November 17, 2005



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